

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.4758 of 2001

Dated: 10.08.2006

Between
Cheemala Kotaiah

.....Petitioner

and

1. The Deputy Registrar / Officer on Special
Duty District Co-op., Central Bank Limited,
Khammam and another.

....Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.4758 of 2001

ORDER:

This writ petition is filed seeking a Mandamus to declare the impugned auction notice issued by the 1st respondent in EP No.1522/99-2000 dated 9.3.2001 as illegal and arbitrary.

It is the case of the petitioner that he is an agriculturist and obtained a loan of Rs.98,000/- for the purpose of erection of poultry farm. Unfortunately, the said poultry farm was closed in the year 1996 itself due to Gambora disease and cyclone, due to which he had sustained heavy loss. However, he paid an amount of Rs.31,000/- towards discharge of the loan amount. He submitted a representation for grant of concession and to close the account in view of loss sustained by him and adjust the balance amount if any through Insurance, since the Insurance policy amount was deducted from the loan account. It is the duty of the society to claim the amounts from the insurer. He was under the impression that his representation was considered and the matter is settled. While the matter stood thus, all of sudden without issuing any notice and without intimating any proceedings commenced earlier, the impugned auction notice was issued. The petitioner was not given any show cause notice as per the procedure and therefore, the impugned order is illegal and arbitrary and is liable to be set aside.

A detailed counter affidavit has been filed on behalf of the

1st and 2nd respondents, wherein it is asserted that since the petitioner failed to repay the loan instalments the society has filed an arbitration case for an amount of Rs.1,88,152.00 before the Deputy Registrar/OSD of the D.C.C.Bank Khammam. The Deputy Registrar /OSD has appointed the Co.op Sub Registrar as arbitrator in case No.1412/1998-99. Accordingly, the arbitrator has issued notice to the petitioner for remittance of loan instalments or if any objections, he may appear before him on 30.12.1998 in the office of the P.A.C.S. Kallurigudem to record his deposition or to file written statement. The notice dated 10.12.1998 was served on the petitioner and attested by the Secretary of the Society, the 2nd respondent herein, whereas the petitioner did not appear before the Arbitrator, therefore after deciding the dispute, he has issued a certificate under Section 71 for recovery of the arrears due by the petitioner on 30.12.1998 and the same was acknowledged by the petitioner's son . The petitioner did not prefer any appeal as available under Section 70 of the Act against the certificate issued under Section 71 of the Act. Basing on the certificate under Section 71, EP proceedings were initiated.

Apart from the above, while admitting the writ petition no interim order was passed. However, the learned counsel for the respondents states that in view of the pendency of the writ petition auction was suspended.

Be that as it may, the petitioner has an effective alternative remedy by way of appeal under Section 76 of the Co-operative Societies Act against the certificate issued by the Arbitrator under Section 71 of the Cooperative Societies Act.

Therefore, the petitioner is directed to file an appeal before

the appropriate Tribunal against the certificate issued under Section 71 of the Act. If any such appeal is filed, the Tribunal shall entertain the same without taking any objection as to the limitation and the appeal shall be disposed of within a period of four months from the date of receipt of a copy of this order. Till disposal of the interim application, status quo as on today shall continue.

Writ petition is disposed of accordingly. No costs.

10.08.2006

rkk